

APPEAL NO. 022961
FILED DECEMBER 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 22, 2002. The hearing officer determined that (1) the appellant/cross-respondent (carrier) waived the right to contest the claimed injury by not timely disputing the injury in accordance with Section 409.021; (2) due to the carrier's waiver, the respondent/cross-appellant (claimant) sustained a compensable repetitive trauma injury on _____; (3) the carrier is not relieved from liability for this injury under Section 409.002, because the claimant timely notified her employer of the claimed injury pursuant to Section 409.001; and (4) the claimant has not had disability. The carrier appeals the waiver, date-of-injury (DOI), and notice determinations on sufficiency of the evidence grounds. The carrier appeals the hearing officer's injury determinations on legal grounds, citing Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). The claimant urges affirmance of these determinations but cross-appeals the hearing officer's disability determination as against the great weight of the evidence. The carrier responds that the claimant did not have disability.

DECISION

Affirmed.

CARRIER'S APPEAL

The hearing officer did not err in reaching the complained-of waiver, DOI, and notice determinations. These determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Notwithstanding its failure to timely dispute the claimed injury under Section 409.021, the carrier contends that the claimant did not sustain a compensable injury, as a matter of law, because the claimant did not have an injury. In support of its position, the carrier cites Williamson, *supra*, and the hearing officer's Findings of Fact Nos. 4 through 7, which provide:

FINDINGS OF FACT

4. It is unlikely that Claimant would be told that her hours of work would be reduced and that she would realize that she had carpal tunnel syndrome within a few days.
5. Claimant's job duties did not require more repetitive activity than that required by the ordinary activities of daily living.
6. Claimant did not sustain a repetitive trauma injury as a result of her job duties for employer.
7. Because Claimant did not sustain a repetitive trauma injury as a result of her job duties for employer, there is not really a date of injury: however, for record keeping purposes, Claimant's date of injury is deemed to be the alleged date of injury, which is _____.

Accordingly, the carrier requests that the Appeals Panel render a decision that the claimant did not sustain a compensable repetitive trauma injury and that the carrier owes no benefits.

In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has recognized that Williamson is limited to situations where there is a determination that the claimant had no injury, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. We read the hearing officer's findings of fact, above, as stating only that the claimed injury is not a result of the claimant's work. The evidence, indeed, shows that the claimant did have an injury in the form of carpal tunnel syndrome. Because the carrier waived its right to contest the claimed injury under Section 409.021, the hearing officer did not err in determining that the claimed injury was compensable.

CLAIMANT'S CROSS-APPEAL

The hearing officer did not err in determining that the claimant did not have disability. The claimant had the burden to prove that her inability to obtain and retain employment at her preinjury wage was a result of the compensable injury. There was conflicting evidence presented with regard to this issue. In view of the evidence presented, we cannot conclude that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BEN SCHROEDER
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge